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OFFICE OF PETITIONS

In re Application of :
McNutt et al. : DECISION ON PETITION TO
Application No. 10/791,020 : WITHDRAW HOLDING OF
Filed: 1 March, 2004 : ABANDONMENT
Attorney Docket No. P0316 :
:

This is a decision on the petition filed on 3 October, 2005, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the non-final Office action mailed on 3 November, 2004, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 13 June, 2005.

Petitioners assert that an amendment was timely filed. In support, petitioners have supplied a copy of an amendment to the specification, the last page of which (Page 9) contains a Certificate of Mailing or Transmission dated 10 December, 2004, stating that the correspondence was deposited in first class mail, and signed by registered patent attorney Patrick N. Burkhart. Attorney Burkhart states, in the present petition, that he has personal knowledge that the correspondence was deposited with the USPS on the date specified on the Certificate of Mailing or Transmission.

As petitioners have provided convincing evidence that an amendment was transmitted to the USPTO on 10 December, 2004, the

showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

The application is being referred to Technology Center Art Unit 3617 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions